

FILED
U.S. DISTRICT COURT
MASSACHUSETTS
2012 OCT 29 P 2:29

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6 MICHAEL JONZUN, an individual,)

7)

8 Plaintiff,)

9 v.)

10) Civil Action _____

11 The Estate of Michael Joseph)

12 Jackson, Mijac Music, The)

13 Michael Jackson Company, LLC,)

14 AEG Live, Paulanne Music,)

15 Chrysalis Songs, Paul Anka,)

16 Paul Anka Productions)

17 Sony Pictures, Sony Music,)

18 Epic Records, and Does 1-4.)

19)

20 Defendants.)

21)

22

23

24

25 **JURY TRIAL DEMANDED**

26

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28

29

COMPLAINT

1 Plaintiff MICHAEL JONZUN alleges:

2

3 **I**

4 **JURISDICTION**

5 1. This court has jurisdiction over the subject matter of
6 this action pursuant to 28 U.S.C. § 1338(a) and 28 U.S.C. §
7 2201-2202, in that this action arises under the Copyright Act
8 of 1976, as amended, 17 U.S.C. § 101 *et seq.* With regard
9 to any claim stated below which is not brought under the
10 Copyright Act, the court has jurisdiction over such other
11 claim under the doctrine of supplemental jurisdiction,
12 pursuant to 28 U.S.C. § 1367.

13

14 **II**

15 **PARTIES**

16

17 2. Plaintiff MICHAEL JONZUN ("JONZUN") is an
18 individual residing in the County of Barnstable, State of
19 Massachusetts.

20 3. Defendant the ESTATE OF MICHAEL JOSEPH
21 JACKSON is believed to be administered in the State of
22 California.

23 4. Upon information and belief, Defendant MIJAC
24 MUSIC is a trust with all rights transferred to and
25 administered by Sony/ATV, a corporation with its principal
26 place of business in New York, New York.

27 5. Defendant MICHAEL JACKSON COMPANY, LLC, is
28 a Delaware Corporation with its principal place of business in
29 Los Angeles County, California.

1 6. Defendant AEG LIVE is a subsidiary of The
2 Anschutz Corporation with its principal place of business in
3 Denver County, Colorado.

4 7. Defendant PAULANNE MUSIC is a corporation with
5 its principal place of business in Los Angeles County,
6 California.

7 8. Defendant CHRYSALIS SONGS a/k/a CHRYSALIS
8 MUSIC GROUP is believed to be a corporation administered
9 by BMG Rights Management with its principal place of
10 business in Davidson County, Tennessee.

11 9. Defendant PAUL ANKA is an individual believed to
12 reside in Los Angeles County, California.

13 10. Defendant PAUL ANKA PRODUCTIONS is a
14 corporation located in Los Angeles County, California.

15 11. Defendant SONY PICTURES is a corporation with its
16 principal place of business in Los Angeles County,
17 California.

18 12. Defendant SONY MUSIC is a corporation with its
19 principal place of business in New York County, New York.

20 13. Defendant EPIC RECORDS is a corporation with its
21 principal place of business in New York County, New York.

22

23 **III**
24 **VENUE**
25

26 14. Venue is proper in this district pursuant to 28 U.S.C.
27 § 1391(b) in that either a substantial part of the events or
28 omissions giving rise to the claim occurred, or that at least
29 one defendant resides in this district, if there is no district in

1 which the action may otherwise be brought.

2 **IV**

3 **GENERAL ALLEGATIONS**

4 15. On or about March, 1990, Plaintiff, Michael Jonzun
5 (Jonzun) was approached by Julio Caro ("Caro"), manager
6 for the artist Sa-Fire, to produce two songs by Safire for
7 Polygram Records ("Polygram"). On or about April 3, 1990,
8 Jonzun entered into a Producer's Agreement with Julio Caro,
9 to produce two singles entitled "I Can't Cry" and "I Never
10 Heard," with payment coming directly to Jonzun from
11 Polygram Records.

12 16. Jonzun was a world renowned Music Producer,
13 Songwriter/Composer, Multi-Instrumentalist, and Recording
14 Artist, who had sold nearly 100 million records and videos
15 worldwide, and had no less than (7) # 1 Billboard Chart Hits
16 and climbing, among other industry accolades, to his credit
17 at the time that Caro had approached Jonzun. Caro had
18 several conversations with Jonzun about collaborating to
19 help finish the song "I Never Heard", which was in a very
20 rough unfinished demo form. The tape contained only a
21 basic piano melody, lead vocal, finger snaps and a scat
22 vocal. On or about April 3, 1990, Caro sent Jonzun a copy
23 of a demo tape of "I Never Heard" with Paul Anka playing the
24 piano and Michael Jackson singing the demo. It is believed
25 that Jackson and Anka recorded the original demo in 1983.
26 Caro asked Jonzun to "consider" two versions of the song

1 and also requested for his feedback on whether he liked the
2 song.

3 17. Jonzun went on to create multiple versions of “I
4 Never Heard”, changing, and/or eliminating, and/or adding
5 such critical elements as the backbeat, chord progressions,
6 shaker, rhythm guitar, orchestral strings, creating a main
7 chorus hook chant, bass lines, harmonizing vocals, grand
8 piano, harpsichord, lyrics, to name a brief few; all of which
9 created the music bed and song foundation, as well as the
10 main chorus hook chants of the composition, and thus
11 completing the composition. Jonzun still has the tapes of the
12 versions he created in his possession.

13 18. It was reported to Jonzun through Caro and
14 Polygram Vice President of A & R Bruce Carbone
15 (“Carbone”) that Michael Jackson loved what Jonzun did with
16 his many song versions. Offers to purchase Jonzun’s
17 interest in the song followed. Jonzun declined all offers.
18 The business relationship broke down soon thereafter,
19 although Safire included Jonzun in her thank-you’s on her
20 album *I Wasn’t Born Yesterday*, when it was released in
21 1991.

22 19. On or about October 2009, after Michael Jackson’s
23 death, Sony Music released the song *This is it*, misleadingly
24 referring to it as a “new single”. In addition to appearing on
25 the album *This Is It*, it was also featured in the movie *This Is
26 It*, the 2009 concert documentary.

1 20. Immediately after its release, Anka threatened
2 legal action against Jackson's estate, claiming that the song
3 *This Is It* was based on the original 1983 song, *I Never*
4 *Heard*, that he and Michael Jackson co-wrote. It is believed
5 that the Jackson estate reportedly then agreed to give Anka
6 50 percent of the song's publishing rights.

7 21. Jonzun first heard the song *This Is It*, shortly after
8 it was released in 2009. He recognized his own work from
9 the collaboration effort on *I Never Heard* from 1990, as the
10 current release of *This Is It* is substantially similar to all of the
11 “*I Never Heard*” versions that Jonzun created in 1990.

12

v

FIRST CLAIM FOR DECLARATORY RELIEF AND AN ACCOUNTING UNDER THE COPYRIGHT ACT

16 (Against all Defendants)

17 22. Plaintiff realleges paragraphs 1 through 21, inclusive,
18 as if fully set forth.

19

20 23. Plaintiff , co-wrote the newly entitled song “This Is It”,
21 as a joint work, which is a remake of the composition “I
22 Never Heard” originally authored by Anka and Jackson.
23 The song is a joint work, pursuant to 17 U.S.C. § 101, and
24 plaintiff is a co-owner of that joint work, pursuant to 17
25 U.S.C. § 201(a), with plaintiff, Anka and Jackson each
26 owning an undivided one third percent (33.33%) interest in
27 and to the copyright of the Composition.

28

1 24. Plaintiff has never assigned or transferred to any
2 person any of his ownership interest in and to any of the
3 Compositions. Therefore, pursuant to the Copyright Act,
4 plaintiff is the co-owner of the copyright in and to the
5 Composition as a consequence of his joint authorship. In the
6 alternative, plaintiff is the co-owner of the copyright in and to
7 the Composition by operation of law, in that each such
8 copyright is a partnership asset.

9

10 25. There exists a real controversy between plaintiff and
11 defendants as to the true ownership of the Composition, and
12 this controversy is dependent on an interpretation of § 201(a)
13 of the Copyright Act of 1976, and the decisional law
14 interpreting that statute.

15

16 26. By this action, plaintiff prays that he be adjudicated a
17 co-author and co-owner an undivided one third (33.33%)
18 interest in and to the copyright in the Composition. In
19 addition, to the extent that the Defendants have received any
20 proceeds or revenues from the Composition up to this time,
21 or during the pendency of this action, plaintiff seeks and
22 accounting of said proceeds or revenues in the event that
23 any of said defendants have received any of plaintiff's
24 33.33% share of each of the Compositions.

25

VI

SECOND CLAIM FOR LANHAM ACT VIOLATION

28

29 27. Plaintiff realleges paragraphs I through 21, inclusive,

1 as if fully set forth.

2
3 28. Jonzun has a protectable interest in "This Is It".

4
5 29. In the credits for "This Is It", Defendants deliberately
6 give persons other than Jonzun sole credit for work Jonzun
7 had added to "I Never Heard", a musical composition used in
8 the creation of "This Is It".

9
10 30. Defendants' deliberate conduct was intended to
11 deceive consumers and lead them to believe the persons
12 listed in the credits were entirely responsible for the
13 composition of "This Is It".

14
15 31. Defendants' falsely designate others persons as the
16 sole originators of Jonzun's work.

17
18 32. Jonzun, at the time, was a sought after music
19 producer and songwriter/composer, who had written and/or
20 produced for major Recording Artists throughout the world,
21 including such Super Star Artists and Legends as Mick
22 Jaggar with Peter Wolf, Clarence Clemons, Tom Browne,
23 New Edition, New Kids On The Block, Laverne Baker, Ben
24 E. King, Adrian Belew of King Crimson, Elliot Easton of The
25 Cars, Stylistics, Engelebert Humperdink, Sugar Hill Gang,
26 Grand Master Flash & The Furious Five, Afrika Bambaata
27 and Jonzun's own band, Jonzun Crew, among others.

28
29 33. As a result of Defendants' failure to give Jonzun

1 credit for the time and effort he put into the finishing the
2 original composition of "I Never Heard", the precursor of
3 "This Is It", Defendants' have deprived Jonzun of the
4 advertising value of being associated with "This Is It", the
5 album and movie, and the good will that would have
6 stemmed from public knowledge of his collaboration in the
7 composition.

8

9 34. Jonzun is currently employed in the music and
10 entertainment industry as a music producer,
11 songwriter/composer, publisher, multi-instrumentalist,
12 recording artist and performer.

13

14 35. Defendants' conduct constitutes a violation of 15
15 U.S.C. section 1125 (The Lanham Act) on account of which
16 Jonzun suffered and continues to suffer damages wholly
17 separate and apart fro the damages which he incurred and
18 continues to incur by reason of the Defendants' violation of
19 17 U.S.C. section 1 et seq. (The Copyright Act) as more
20 particularly set forth above.

21

22 36. The Defendants' conduct described in Count II
23 herein relates solely to the Defendants' failure to properly
24 associate Jonzun's name with the work "This Is It" and is
25 wholly separate and apart from Defendants' improper use of
26 Jonzun's work as more particularly set forth in Count I.

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2 **VII**

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THIRD CLAIM FOR UNJUST ENRICHMENT

4

(Against All Defendants) Plaintiff realleges paragraphs 1
5 through 36,

6

7 37. Wholly separate and apart from the Defendants'
8 violations of 17 U.S.C. section 1 et seq (The Copyright Act)
9 and 15 U.S.C. section 1125 (The Lanham Act), the Plaintiff is
10 entitled to an award of unjust enrichment for the use of his
11 original work in the composition "This Is It".

12

13 WHEREFORE, plaintiff prays for judgment as follows:

14

15 (a) On the First Claim for relief, for a judicial declaration
16 that plaintiff is the co-author and owner of an undivided one
17 third percent (33.33%) interest in and to the copyright of
18 "This Is It", as well as monetary damages believed to be in
19 the vicinity of ten million dollars (\$10,000,000), that
20 Jonzun sustained in consequence of Defendants' failure to
21 credit Jonzun's work and failing to pay Jonzun his rightful
22 share of all gains, profits and advantages generated by "This
23 Is It".

24

25 (b) On the Second Claim for relief, an amount no less
26 than four million dollars (\$4,000,000.) in additional damages
27 Jonzun has sustained as a consequence of Defendants'
28 actions in violation of 15 U.S.C. sec. 1125 (The Lanham Act)
29 or in such other additional damages as to the Court shall

1 appear proper, and that such damages requested by trebled
2 as allowed by 15 U.S.C. sec. 1117;

3

4 (c) On the Third Claim for relief, an amount no less than
5 ten million dollars (\$10,000,000) for the Defendants' unjust
6 enrichment as a result of failing to credit Jonzun for his
7 original work used in "This Is It";

8

9 (d) pursuant to 28 U.S.C. section 505 and/or 15 U.S.C.
10 Sec 1117, Defendants' jointly and severally, pay to Jonzun
11 the costs of this action and reasonable attorneys' fees, and

12

13 (e) that Defendants proffer any other relief that this court
14 deems just and equitable.

15

16 **DEMAND FOR JURY TRIAL**

17 Pursuant to Rule 38 of the Federal Rules of Civil
18 Procedure, plaintiff hereby demands a jury trial.

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21 Respectfully submitted,

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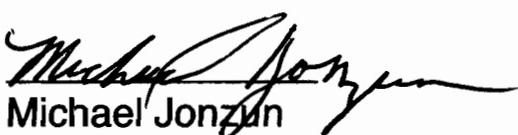
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29 Dated: October 26, 2012



Michael Jonzun

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